IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 24381 of 2004

Between:

1 K.Narayana Rao, s/o Dr.K.Santi Swarup,
r/o 11-8-33/2, Dasapalla, Visakhapatnam.
2 Dr.K.Ashok, d/o K.Santi Swarup,
r/o 11-8-33/2, Dasapalla, Visakhapatnam.

..... PETITIONERS

AND

Visakhapatnam Municipal Corporation,

represented by its Commissioner,
Visakhapatnam.

..... RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly one in the nature of writ of mandamus declaring as illegal, arbitrary, and without jurisdiction the Endorsement in B.A.No.2004-ba-12217 dated 10-12-2004 issued by the respondent and issue a consequential direction to the respondent to reconsider the application of the petitioner dated 27-11-2004 in terms of provisions of Hyderabad Municipal Corporation Act and the Rules made thereunder without reference to G.O.Ms.No.657 dated 08-10-2001 and pass such other or further order or orders.

Counsel for the Petitioner: MR.D.V.SITARAMAMURTHY

Counsel for the Respondent: MR.T.S.VENKATARAMANA

S.C. for V.M.C.

The Court at the stage of admission made the following

ORDER:

On 28-12-2004, when the matter came up for admission, the learned Standing Counsel for the respondent took time for instructions. Thereafter, the case was listed on
27-04-2005 and from that day, the case is posted to today. There is no representation on behalf of the respondent.

(2) Heard the learned counsel for the petitioners.

(3) Rule Nisi.

(4) This petition is filed questioning the endorsement of the respondent in B.A.No.2004-ba-12217, dated 10-12-2004 rejecting the application of the petitioner for construction of a building on the ground that as per G.O.Ms.No.657, Revenue (Registration-I) Department, dated 08-10-2001, the land in T.S.No.1197, Block No.57 of Waltair Ward, Visakhapatnam belongs to the Government and as a Warning Board is erected at the site.

(5) The case of the petitioners is that the property in which they intend to construct a building for which they sought permission from the respondent, belongs to them, as it was purchased in 1963 under a registered sale deed and they, their father and brother partitioned that land and other properties, and had filed a declaration before the competent authorities under the Urban Land Ceilings Act in respect of that land and the said competent authority issued proceedings dated 17-06-1978 informing that the land held by them is within the ceiling limits but when the second petitioner

sought permission for construction of building in a part of that land, the same was returned with the endorsement impugned in the petition.

(6) G.O.Ms.No.657, Revenue (Registration-I) Department, dated 08-10-2001 is a Notification issued under Section 22-A of the Registration Act 1908, which reads:

[Section 22-A. (1) **Documents registration of which is opposed to public policy**:- The State Government may, by notification in the official gazette, declare that the registration of any document or class of documents is opposed to public policy.

(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable]

So as per section 22-A of Registration Act Government can issue a G.O. declaring that registration of documents of a class is opposed to public policy, by publishing the same in official gazette and when such a publication is made the registering officer shall refuse to register such class of document. The notification under Section 22-A of Registration Act does not empower the municipal authorities to refuse building permissions.

(7) The learned counsel for the petitioners relying on ***Hyderabad Potteries Private Limited v. Collector, Hyderabad*** contends that since entries in TSLR are not conclusive proof of title of the Government and since petitioners are in possession of the land for more than 30 years, the impugned memo is liable to be set aside.

(8) What is to be considered by the municipalities when a person seeks permission for construction of a building is his *prima facie* title to the land over which he intends to make the construction and if the plan is in conformity with the building Rules, Bye-laws etc. They are not the authorities competent to decide title or embark on the question whether the applicant has title to the property over which he is seeking permission to construct a building. They are to take into consideration only the documents produced by the applicant, but are not supposed to import their personal knowledge and refuse permission that too without any objection petition from anybody and so the endorsement impugned is liable to be, and hence is, set aside. Respondent shall consider the application of the petitioners seeking permission to construct a building, taking into consideration only the document filed by them along with their application and pass appropriate orders, without taking into consideration G.O.Ms.No.657, Revenue (Registration-I) Department, dated 08-10-2001.

(9) Accordingly, the writ petition is allowed and Rule Nisi is made absolute. No costs.

C.Y. SOMAYAJULU, J

Date: 29th April, 2005

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To

1. The Commissioner,

Visakhapatnam Municipal Corporation,

Visakhapatnam.

2. Two CD copies